LAU KEE HOO v. PUBLIC PROSECUTOR

[F.C. (Raja Azlan Shah L.P., Abdul Hamid, Mohamed Azmi, Hashim Yeop A. Sani & Abdoolcader F. JJ.) August 19 & December 20, 1983]
[Kuala Lumpur – Federal Court Criminal Appeal No. 4 of 1981]

Criminal Law & Procedure – Mandatory death sentence under Internal Security Act, 1960 – Whether constitutional – Charge of having in control ammunition – Whether knowledge of accused that ammunition was buried in his oil palm holding amounts to control – Evidence Act 1950, s. 27 – Internal Security Act, 1960, s. 57(1) – Federal Constitution, arts. 5 & 8.

Constitutional Law – Whether mandatory death sentence unconstitutional – Federal Constitution, arts. 5(1), 8(1), 121(1) & 149.

Evidence – Whether knowledge of accused that ammunition was buried in his oil palm holding amounts to control – Evidence Act 1950, s. 27.

Evidence – Admissibility – Statement to police officer Whether induced – Statement leading to recovery of object – Evidence Act, 1950, s.27.

This was an appeal from the conviction and sentence by the learned judge of the High Court. On the appeal two grounds were presented (a) that the mandatory death sentence under the Internal Security Act, 1960 is unconstitutional and (b) that there was no proof that the appellant was in control of the detonators and handgrenades, the subjects of the charge.

Held, dismissing the appeal: (1) Parliament has the plenary powers to enact capital punishment in particular under the Internal Security Act. The authority to enact the law, as a constitutional matter, has never been in doubt;

(2) in the circumstances of this case, and on the evidence the appellant's knowledge that the detonators and grenades were buried in his oil palm holding amounts to control of them.

Cases referred to:

(1) *Public Prosecutor* v. *Lau Kee Hoo* [1983] 1 M.L.J. 157.
(2) *Chong Soon Koy* v. *Public Prosecutor* [1977] 2 M.L.J. 78.
(3) *Sum Kum Seng* v. *Public Prosecutor* [1981] 1 M.L.J. 244.
(4) *Mithu* v. *State of Punjab* A.I.R. 1983 S.C. 473.
(5) *Maru Ram* v. *Union of India* A.I.R. 1980 S.C. 2147.

HIGH COURT.

Mohamed Azman (Deputy Public Prosecutor) for the prosecution.

Karpal Singh for the accused.

Zakaria Yatim J.: In this security case, the Accused was charged for having under his control six home-made grenades and five detonators in his oil palm small holding at Sungei Pelek in the District of Sepang, on July 6, 1977 at about 7.00 p.m., and thereby committed an offence under section 57(1) (b) of the Internal Security Act, 1960 (Revised 1972) and punishable under section 57(1) of the said Act.

At the commencement of the trial, Defence Counsel raised a preliminary point. He questioned whether the death sentence provided under section 57(1) of the Internal Security Act was constitutional. According to him, this case was referred to the Federal Court for a ruling on this point and the Federal Court, on September 29, 1982 decided that the death sentence provided under section 57(1) of the Act is constitutional. The decision of the Federal Court is found in *Public Prosecutor* v. *Lau Kee Hoo*[1]. I am bound by the decision of the Federal Court and I accordingly proceeded with the trial.

The case for the Prosecution may be briefly stated as follows:–

On July 6, 1977 ASP Chan Peng Wan (P.W.3) was instructed to lead a team of three officers to assist in the arrest of a person suspected to be involved in subversive activities and to recover from him some home-made hand-grenades. They arrived at Banting Police Station where the District Special Branch Officer joined them. From there they proceeded to Sungei Pelek Police Station and then to the Accused's house. They were led to the house by one Lee Chee Siong, who had earlier been arrested. On arrival at the house, P.W.3 and his team of officers entered the house through the front door. They first met an old lady. Lee Chee Siong asked her the whereabouts of her son. The old lady replied that her son was in and pointed in the direction of the kitchen. P.W.3 went to the kitchen with Lee Chee Siong and saw the Accused seated at a table having dinner. On seeing the Accused, Lee Chee Siong told him that he, Lee Chee Siong, had been arrested and that P.W.3 and the others were Special Branch Officers. P.W.3 then identified himself. The Accused was arrested and taken to Sungei Pelek Police Station. At the Police Station, the Accused was questioned by P.W.3 as to the whereabouts of the hand-grenades. The Accused then led the Police Officers to his oil palm small holding, which was one and half miles away from the Police Station. There the Accused recovered a plastic can containing six grenades and five detonators. He also recovered a biscuit tin containing documents. From the evidence of the District Settlement Officer, (P.W.6) it was confirmed that the small holding was registered in the name of the Accused and another person.

At the end of the case for the Prosecution, I found a *prima facie* case had been made out against the Accused.

Before proceeding to give my reasons, it is pertinent to mention here that the Prosecution attempted to admit the cautioned statement of the Accused as evidence. But in the course of a trial within a trial to ascertain the admissibility of the statement under Regulation 21(1)(e) of the Essential (Security Cases) (Amendment) Regulations, 1975, it was revealed, through the evidence of the detective corporal (E.W.2), who acted as an interpreter when the statement was taken, that the Accused was induced to make the statement. The inducement was that if the Accused signed the statement he would be treated leniently and would not be tried in Court. It was on this understanding that the Accused signed the statement. I ruled that the statement was not admissible.

My reasons for calling the Accused to enter his defence were based on the evidence of the witnesses for the Prosecution and on the exhibits recovered.

I found from the evidence that the Prosecution had proved beyond reasonable doubt that the Accused had, under his control, the six home-made hand-grenades and the five detonators. P.W.3, in his evidence said that he and four other officers were led to the Accused's house at Sungei Pelek New Village by one Lee Chee Siong. There they found the Accused having his dinner and arrested him. He was taken to Sungei Pelek Police Station where he was questioned as to the whereabouts of the hand-grenades. P.W.3 said, "When asked for the whereabouts of the hand-grenades the suspect replied that they were buried inside his oil palm small holding and he could lead us to recover it." The Accused then led the Police to his small holding and there, after searching at two or three spots, he took out a plastic container (P8). The Accused also took out a biscuit tin (P9) from a spot about ten yards away from where he recovered the plastic container in the same small holding. After recovering the exhibits they returned to the Police Station. At the Police Station, Inspector Maarof opened the plastic container and the biscuit tin in the presence of the Accused and P.W.3. From the plastic container, the Police recovered six grenades, five detonators, two communist flags and a booklet. From the biscuit tin, the Police recovered a lot of documents. The evidence of Inspector Maarof (P.W.5) corroborated P.W.3's evidence regarding the recovery of the exhibits in the small holding and regarding the six hand-grenades and five detonators found in the plastic container. I accepted the evidence of both P.W.3 and P.W.5.

The evidence of P.W.3, who said, "When asked for the whereabouts of the hand-grenades the suspect replied that they were buried inside his oil palm small holding and he could lead us to recover it" is admissible and relevant in this case under section 27 of the Evidence Act. The Section states:—

> "When any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of that information, whether the information amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved."

In *Chong Soon Koy* v. *Public Prosecutor*[2], the Federal Court held that the statement relating to the discovery of the firearm and ammunition was rightly admitted in evidence under section 27 of the Evidence Act. In that case the Appellant, who had been arrested by the Police, gave a police officer "information with regard to a firearm and some ammunition which he had hidden in the Berapit Hills in Bukit Mertajam." According to the evidence of the Police Officer, as a result of this information, the Police went to the place led by the Appellant and there the Appellant recovered the firearm and ammunition. The Federal Court ruled that this evidence alone was sufficient to justify the conviction of the Appellant by the trial judge.

In another case, *Sum Kum Seng* v. *Public Prosecutor*[3] the Federal Court made the same ruling. In this case, the Court held that the statement of the Appellant to the Police Officer that he "admitted burying the weapons and offered to show me the place' was the information supplied by the Appellant that had been the cause of the proven discovery. The fact that the information was told by the Police Officer in the trial court in substance does not *per se* make it inadmissible.

Counsel for the Accused argued that in order to prove "control" it must be shown that the Accused buried the grenades. In my opinion what is required under section 27 of the Evidence Act is the information and the discovery. The information given by the Accused to P.W.3 and the discovery of the grenades clearly established that the Accused was in control of the grenades.

Counsel for the Accused further argued that in order to establish that the Accused was in control of the grenades, "knowledge" must be proved. I am satisfied beyond any doubt that from the evidence of P.W.3 and from the information given by the Accused to P.W.3 and the subsequent discovery of the grenades, the Accused had full knowledge that what was buried in his small-holding were the hand-grenades.

With regard to the six hand-grenades and the five detonators, I was satisfied that they were ammunitions as defined in section 2 of the Internal Security Act. According to the evidence of the Contingent Armament Officer, ASP Wong Ban Foo (P.W.2), the six hand-grenades, one of which was primed, were locally made. The five detonators were locally improvised for use with the home-made grenades. The detonator with a safety fuse would be inserted into the cavity of the grenade. The safety fuse would then be lighted with a match and the grenade thrown towards the object. The grenade would explode in about 12 – 14 seconds after being lighted. P.W.2 said that the grenades and the detonators were found to be in good condition and were serviceable. He carried out a test on one of the grenades to ascertain whether it was serviceable. The grenade exploded and twelve pieces of splinters of varying sizes were recovered from the scene of the explosion. P.W.2 also tested the detonator (i.e. the impact type) by striking the striker with a hammer. The detonator exploded five seconds after the striker was struck. He also tested the detonator with the burning fuse by having the fuse lighted. The detonator exploded after a lapse of about fourteen seconds. After carrying out the tests, P.W.2 came to the conclusion that the grenades and the detonators were in good condition and serviceable. I accepted the evidence of P.W.2. The Government Chemist, Mr. Lau Cheng Siew (P.W.1), examined the contents of one of the grenades and found that they were nitro-glycerine and nitro-cellulose. According to him both these substances are explosive substances as defined in section 2 of the Explosives Ordinance, 1957. I accepted the evidence of P.W.1.

The Accused, in his defence, elected to give evidence on oath. He admitted that he was the co-owner of the oil palm small holding in question. His share of the land was slightly more than three acres. There was a dividing line between his land and the co-owner. He told the court that about five minutes before he was arrested by the Police, Lee Chee Siong came to see him in his house. He was then having his dinner with his brother, Lau Hock Meng (D.W.2). Lau Hock Meng's wife (D.W.3) was also there at that time. When Lee Chee Siong came, he said he wanted to speak to the Accused privately. His brother then left the dining table. According to the Accused, Lee Chee Siong told him that he had been arrested by the Police and that he was forced by the Police to surrender the hand-grenades which he had earlier buried in the Accused's estate. Lee Chee Siong had forgotten the actual spot where he buried the grenades and asked the Accused to locate the spot in order to dig up the grenades for the Police. The Accused went on to say that Lee Chee Siong told him the spot was near a "jambu batu" tree. The Accused said that when he heard what Lee Chee Siong told him, he was very angry and asked Lee Chee Siong why he buried things in his estate without his permission. At that time the Police came and arrested the Accused. According to him, when he was questioned by the Police about the hand-grenades buried in his estate, he told the Police that Lee Chee Siong told him about it only a few minutes before he was arrested. They then went to the estate and when they arrived there, the Accused began to look for the "jambu batu" tree. He found the tree. He made a search first before he found the place. He said when he found the two containers he did not know what was inside.

The Accused's brother (D.W.2) testified that before the Accused was arrested, Lee Chee Siong came to visit the Accused. D.W.2's wife, D.W.3 also told the same story.

The case for the defence was centered mainly on the alleged conversation between the Accused and Lee Chee Siong, which took place about five minutes before the Accused was arrested. According to the Accused, it was from this conversation that he knew the hand-grenades were buried in his estate by Lee Chee Siong. I did not believe that such a conversation took place. There was the evidence of the Prosecution that Lee Chee Siong came to the Accused's house with the Police. The defence did not challenge or deny this fact. According to P.W.3. he went to the kitchen with Lee Chee Siong. In my opinion, no Police Officer would allow a person in his custody (Lee Chee Siong) to disappear into the rear of the house for five minutes. If such conversation had taken place, P.W.3 would have heard it, but he was not cross-examined about it. In my view, the story about the conversation was created by the Accused and his

witnesses. His brother (D.W.2) and his sister-in-law (D.W.3) merely repeated the story that a meeting took place between the Accused and Lee Chee Siong. But they did not know what the conversation was about. Strangely enough, D.W.3, who was doing washing at that time and whose back was facing the Accused, knew what was going on behind her. I did not believe the evidence of D.W.2 and D.W.3.

Counsel for the Accused submitted that the Accused went from one place to another to look for the "jambu" (guava) tree. According to him, this clearly shows that the Accused had no knowledge. With respect, I did not believe the story about the "jambu" (guava) tree. The Accused's small holding was more than three acres in size. It was a large piece of land to search for the hidden grenades. Unless the Accused knew personally where the grenades were exactly hidden, he would not be able to find them.

On the grounds stated above, I could not accept the defence story. The defence, therefore, failed to raise any reasonable doubt in the Prosecution case and I accordingly found the Accused guilty as charged. He was convicted and sentenced to death.

The accused appealed to the Federal Court.

FEDERAL COURT.

Karpal Singh for the appellant.

Lim Beng Choon (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah F.J. (delivering the judgment of the Court): Mr. Karpal Singh has put forward 2 grounds of appeal which we think were powerful arguments and attractively presented. We shall deal with each of the grounds very briefly.

There is a continuing debate as to the wisdom and effectiveness of capital punishment in particular under section 57(1) of the Internal Security Act 1960 but we think the authority to enact it , as a constitutional matter, has never been in doubt. Parliament has the plenary powers to enact it. The case of *Mithu* v. *State of Punjab*[4] which was cited by Mr. Karpal Singh must be kept in its context. What may be an appropriate course of reasoning in a case involving capital punishment in India is not to be literally or even analogically applied to a case under section 57(1) of the Internal Security Act 1960. The position in *Mithu* relates to a set of circumstances hinging on specific provisions of the Indian Criminal Procedure Code, and we find no reason to depart from the decision of this court in *Public Prosecutor* v. *Lau Kee Hoo*[1] and the principles enunciated therein which we reaffirm. We would only observe that the Indian legislative provisions under consideration in *Mithu* have no paradigm here, and it is also significant that in condemning the mandatory death sentence in *Mithu*, the Supreme Court of India did not refer to or discuss its decision in *Maru Ram* v. *Union of India*[5] which upheld a mandatory non-capital sentence and the rationale thereof.

With regard to the ground on section 27 of the Evidence Act, we would briefly say that in the particular circumstances of this case on the evidence given of what was said and what took place, we are satisfied that the appellant's knowledge that the detonators and home-made grenades were buried in his oil palm holding amounts to control of them.

We therefore dismiss the appeal.

Appeal dismissed.

Solicitors: *Karpal Singh & Co.*

CHE ANI BIN ITAM v. PUBLIC PROSECUTOR

[F.C. (Raja Azlan Shah L.P.; Hashim Yeop A. Sani & Abdoolcader F.JJ.) December 12 & 20, 1983]

[Kuala Lumpur – Federal Court Criminal Reference No. 62 of 1981]

Criminal Law and Procedure – Whether sentence of life imprisonment defined to mean the duration of natural life of the person is unconstitutional – Firearms (Increased Penalties) Act, 1971, s. 4 – Firearms (Increased Penalties) (Amendment) Act, 1974. s.2 – Federal Constitution, arts. 5(1) & 8(1).

In this case the appellant was convicted in the Sessions Court of an offence under section 4 of the Firearms (Increased Penalties) Act, 1971 and sentenced to imprisonment for life with six strokes of whipping. He appealed to the High Court and on the application of the appellant the learned Judge stayed the proceedings and certified the following constitutional question for the determination of the Federal Court:

"Whether or not the sentence of life imprisonment for the duration of natural life as provided under section 4